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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,580	12/28/2001	Gary R. Eddy	EDD002USPT01	9162

23403 7590 06/27/2007

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ART UNIT	**PAPER NUMBER**
3632	

MAIL DATE	DELIVERY MODE
06/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/033,580
Filing Date: December 28, 2001
Appellant(s): EDDY, GARY R.

Michael S. Sherrill
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 23, 2007 appealing from the Office action mailed November 30, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,294,422	Odekirk	10-1981

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-16, and 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In independent claims 1, 18, and 19, Applicant claims that the support bracket is "transversely nestable". The specification and drawings as originally filed show the bracket as having a concavity, but does not disclose how the bracket is transversely nestable.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims that a primary rib formed within the main beam and the strut, longitudinally overlaps the first leg and the second leg. The rib (131) disclosed by Applicant does not appear to overlap the first or second leg. This claim has been examined to the best extent possible.

Claim Rejections - 35 USC § 103

Claims 1, 3-16, and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odekirk. Odekirk discloses an aluminum gutter support bracket to be used with like brackets to support a gutter, with a main beam (20 and 18) having longitudinally spaced distal and proximal ends, laterally spaced first and second edges, and transversely spaced first and second surfaces. There is a connection element (60) extending in a first transverse direction from the distal end of the main beam and transversely spaced from the beam. The connection element has strut (62) with a first transverse end connected to the distal end of the main beam and a second transverse end extending in a first transverse direction from the distal end of the main beam. There is a tab (64) with a longitudinal end connected to the second transverse end of the strut and a second transverse end extending in a second longitudinal direction from the second transverse end of the strut, with a laterally extending third bend line along a

transition line from the strut to the tab. Odekirk does not disclose the distance at which the tab is spaced from the main beam. However, that is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention, depending on the dimensions of the outside wall of the gutter.

There is a hook (70) extending in the first transverse direction and a second longitudinal direction from the proximal end of the main beam, and defining a concavity open in a second transverse direction. The hook includes a transversely extending shaft portion (72) with a first end connected to the proximal end of the main beam and a second end extending in the first transverse direction from the proximal end of the main beam, a hooking portion with a first end connected to the second end of the shaft and a second end extending away from the distal end of the main beam in a second longitudinal direction from the second end of the shaft, and a transversely extending extension portion (74) with a first end connected to the second end of the hooking portion and a second end extending in the second transverse direction from the second end of the hooking portion. There is also a longitudinally aligned hole through each of the shaft and extension portions of the hook effective for accommodating partial passage of a mechanical fastener through the holes.

There is a first leg (22 on one side) extending in a second transverse direction from the first edge of the main beam with a proximal longitudinal end substantially transversely aligned with the proximal end of the main beam. There is a also a second leg (22 on the other side) extending in a second transverse direction from the second edge of the main beam with a proximal longitudinal end substantially transversely

aligned with the proximal end of the main beam. The main beam, first leg, and second leg define a concavity accessible from the first transverse direction, whereby the support bracket is transversely nestable (if Applicant's bracket is found to be inherently transversely nestable through some manipulation of the bracket, then the bracket disclosed by Odekirk could certainly be transversely nestable through manipulation of the bracket) .

There is a first bend line (between 20 and 62) along a transition line from the main beam to the connection element and at least one rib (see fig. 1) formed within the main beam and the connection element, which extends across and substantially perpendicular to the first bend line, improving the structural strength of the bracket along the bend line (if Applicant's rib is found to "overlap" the first and second leg, then by the same interpretation the rib would also overlap the legs). There is also a laterally extending second bend line (between 72 and 18) along a transition line from the main beam to the hook and at least one rib (see fig. 1) formed within the main beam and the hook, which extends across and substantially perpendicular to the second bend line, improving the structural strength of the bracket along the bend line.

Odekirk also teaches a laterally extending third bend line (between 60 and 62) along a transition line from the strut to the tab. Odekirk does not teach a rib formed at the third bend line, but it would have been obvious to one of ordinary skill in the art at the time of the present invention to have used the teaching of Odekirk in providing ribs at the first and second bend lines of the bracket, and provided a similar rib at the third bend line to increase the structural strength of the bracket.

There are also longitudinally extending fourth and fifth bend lines along the transition lines from the main beam to the first and second legs, respectively. The fourth and fifth bend lines each have a distal longitudinal end proximate the distal end of the main beam and the at least one rib that extends across and is substantially perpendicular to the first bend line, extends beyond the distal longitudinal ends of the fourth and fifth bend lines in the second transverse direction. The transverse heights of the first and second legs are not disclosed, but that is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention.

The gutter is installed by the steps of: obtaining a length of eaves trough, obtaining a length of eaves trough support brackets, engaging the connection element of the support bracket, sliding the distal edge of the rear wall of the eaves trough into the concavity defined by the hook, positioning the eaves trough assembly along an eave, and securing the connected eaves trough assembly to the eave.

(10) Response to Argument

Applicant argues that the rejection under section 112, 1st paragraph is improper because "while the Figures and written description do not expressly illustrate or describe the brackets in nested configuration, Figures 1-4 clearly illustrate a bracket with the inherent function of nestability". If Applicant is claiming that a plurality of brackets is inherently nestable, how are they nestable? The legs 110,120 extend straight down, as best shown in figure 4, so are they bent outward to force another

bracket into a nestable relationship with the first bracket or is the other bracket just a smaller bracket? (Applicant's figures 3 and 4 shown below)

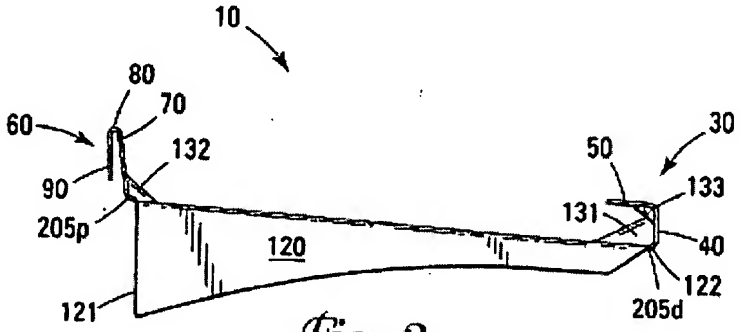


Fig. 3

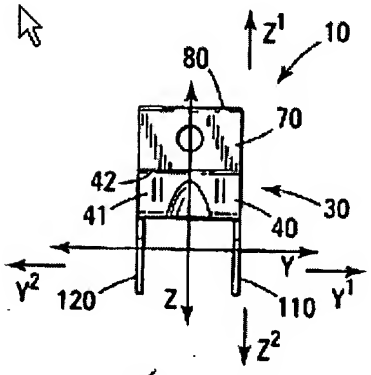


Fig. 4

Applicant also argues that the rejection under section 112, 2nd paragraph is improper because "the rib (131) clearly longitudinally overlaps the first leg (110)". However, the rib fails to contact the legs at any location, and certainly fails to cover any part of the legs. (see below)

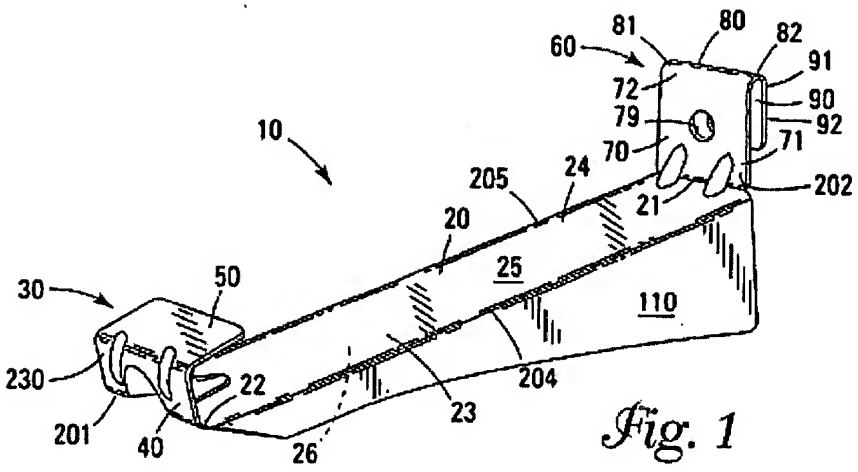


Fig. 1

In response to Applicant's argument that Odekirk does not disclose a nestable bracket, the arguments appear to be a direct contradiction to the arguments against the rejection under section 112, 1st paragraph. Applicant argues that the clip 70 and connection element 60,62 disclosed by Odekirk prevents it from being nestable, but Applicant's bracket has a similar clip 60 and connection element 30. Applicant also argues that the legs are "extremely short and uniform". However, Applicant's legs are uniform and the length of the legs is irrelevant if the legs can overlap the leg of another bracket. If Applicant's bracket is inherently nestable, the bracket of Odekirk would be inherently nestable as well. (Applicant's figure 1 above this paragraph, Odekirk below)

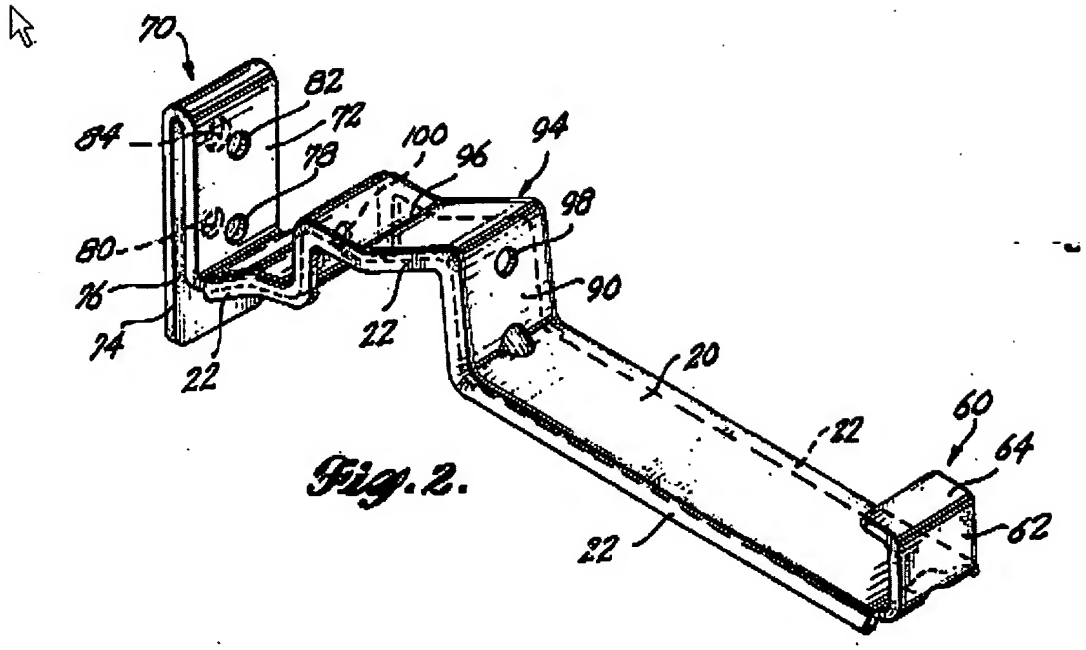
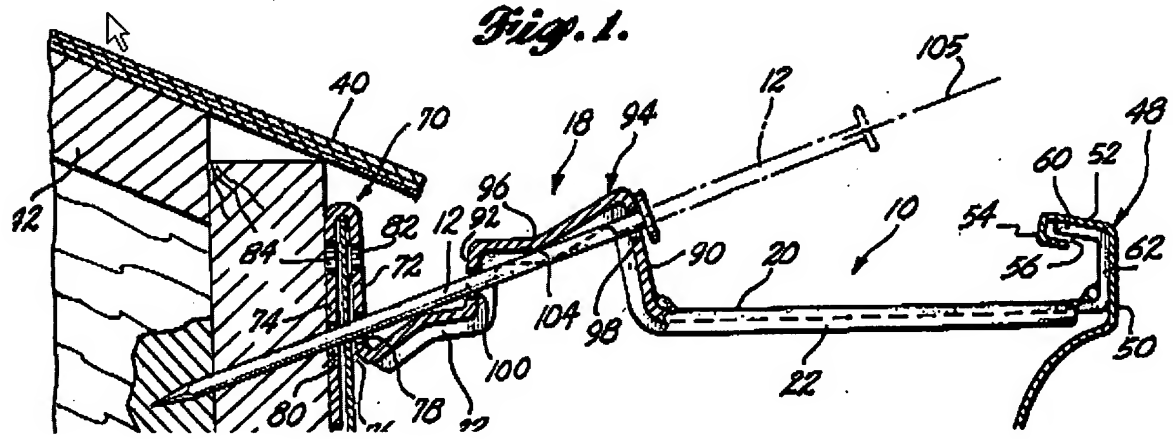


Fig. 2.

Applicant also argues that the rib disclosed by Odekirk (between 20 and 62) does not longitudinally overlap the legs 22. The Examiner agrees, but it is unclear how Applicant's rib could be said to overlap the legs if Odekirk's rib does not. If through some interpretation Applicant's rib overlaps the leg, Odekirk's does as well. (see below between 20 and 62)

Fig. 1.



(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Steven Marsh/

Steven M. Marsh

Carl D. Friedman
Supervisory Patent Examiner
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Conferees:

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